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THE GENERAL COURT OF JUSTICE
FILED THE GENERAL COURT OF JUSTICE 2011 JUL 28 ANSOPERIOR COURT DIVISION 11 CVS 1058
CALDWELL COUNTY
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) <u>VERIFIED COMPLAINT</u>
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Plaintiff, Parkway Bank (the "Bank"), complaining of Mingo Tribal Preservation Trust, Jesse W. Horton, Jr., Trustee, and Jesse W. Horton, Jr., individually, alleges and says:

I. PARTIES.

- 1. The Bank is a North Carolina banking corporation, organized and existing under the laws of the State of North Carolina, with places of business in North Carolina, including Lenoir, Caldwell County, North Carolina.
- 2. Upon information and belief, Defendant Mingo Tribal Preservation Trust ("Borrower") is trust located in Watauga County, North Carolina.
- 3. Upon information and belief, Defendant Jesse W. Horton, Jr. is a Trustee of the Mingo Tribal Preservation Trust.
- 4. Upon information and belief, Defendant Jesse W. Horton, Jr. ("Guarantor") is a citizen and resident of Watauga County, North Carolina.

II. CLAIMS FOR RELIEF.

A. CLAIM ONE: BREACH OF CONTRACT – PROMISSORY NOTE.

- 5. The Bank re-alleges all of the above paragraphs by reference.
- 6. On or about June 7, 2007, Borrower executed and delivered to Bank a Promissory Note (the "Original Note") in the principal amount of \$8,850,000.00. A true and correct copy of the Original Note is attached hereto and incorporated herein by reference as **Exhibit A**.

- 7. The Original Note has been modified several times. On or about December 7, 2009, the date of the most recent modification, Borrower executed and delivered to Bank a Loan Modification Agreement that renewed the terms of the Original Note, and which was recorded on February 8, 2010 in Book 965 at Page 333, Yadkin County Registry (as modified, the "Note"). A true and correct copy of the Note is attached hereto and incorporated herein by reference as **Exhibit B**.
- 8. The Note evidences Borrower's obligation to pay the Bank \$8,850,000.00, plus interest on said amount upon such terms as are set forth in the Note.
- 9. The Note was secured by a Deed of Trust dated June 7, 2007, in favor of Gary T. Clawson, Trustee for Bank, encumbering 1,368.53 acres in Yadkin County, North Carolina (the "Real Property").
- 10. Borrower defaulted under the terms of the Note by failing to make the payments required by the terms of the Note. Thereafter, the Bank instituted a foreclosure action in the General Court of Justice for Yadkin County, North Carolina, Case No. 11 SP 35. Pursuant to an Order entered by the Yadkin County Clerk of Superior Court, and after due advertisement, the Real Property was sold at public sale on April 15, 2011, to the highest bidder for the sum of \$5,700,000.00. A true and correct copy of the Final Report and Account of Foreclosure Sale for the Real Property, dated June 30, 2011, is attached hereto as **Exhibit C**, and incorporated herein by reference.
- 11. After application of the sale proceeds and all costs involved in the public sale, a deficiency balance remains on the Note that is due and owing to Bank in the amount of \$3,836,146.61, plus continuing interest after April 25, 2011, at the daily rate of \$586.0780.
- 12. The Bank has made demand upon the Borrower for payment of the balance remaining due pursuant to the Note, but Borrower has failed and refused to pay same. Borrower's failure to make payment when and as required by the Note constitutes a breach of contract that has damaged Bank and entitles Bank to recover from Borrower the entire principal and interest balance due under the Note, plus attorneys' fees and court costs.
- 13. The Bank has given Borrower notice pursuant to N.C. Gen. Stat. § 6-21.2 that it intends to enforce its right to collect attorneys' fees from Borrower, but Borrower has failed to pay the outstanding balance due to Bank within the time period allowed by said statute, and thus is liable to Bank for attorneys' fees equal to fifteen percent (15%) of the amount owed to Bank.

B. CLAIM TWO: BREACH OF CONTRACT – GUARANTY.

- 14. Bank re-alleges all of the above paragraphs by reference.
- 15. On or about June 7, 2007, Guarantor executed and delivered to Bank a Guaranty (the "Guaranty"), a true and correct copy of which is attached hereto and incorporated herein by reference as **Exhibit D**.

- 16. The Guaranty provides that Guarantor unconditionally guarantees payment to Bank of up to \$8,850,000.00 in principal, plus accrued interest thereon, late fees, and costs of collection (including attorneys' fees) of the obligations and liabilities of Borrower to Bank.
- 17. Borrower has defaulted under the terms of the Note by failing to make the payments required by the terms of the Note.
- 18. Bank has made demand upon Guarantor for payment of the balance remaining due pursuant to the Note and the Guaranty, but Guarantor has failed and refused to pay same. Guarantor's failure to make payment when and as required by the Note and the Guaranty constitutes a breach of contract that has damaged Bank and entitles Bank to recover from Guarantor the entire unpaid balance due under the Note, plus attorneys' fees and court costs.
- 19. Bank has given Guarantor notice pursuant to N.C. Gen. Stat. § 6-21.2 that it intends to enforce its right to collect attorneys' fees from Guarantor, but Guarantor has failed to pay the outstanding balance due to Bank within the time period allowed by said Statute, and thus is liable to Bank for attorneys' fees equal to fifteen percent (15%) of the amount owed to Bank.

WHEREFORE, Bank respectfully requests that:

- A. Pursuant to Claim One and Claim Two it have and recover of the Defendants, jointly and severally, the sum of \$3,836,146.01, plus continuing interest after April 25, 2011 at the daily rate of \$586.0780;
- B. It have and recover of the Defendants, jointly and severally, the costs of this action, including without limitation, attorney's fees pursuant to N.C. Gen. Stat. § 6-21.2; and,
 - C. It be awarded such other and further relief as is necessary and just.

This the $\frac{267}{\text{day of}}$ day of $\frac{1}{\text{day of}}$, 2011.

D. ANDERSON CARMEN, N.C. State Bar No. 10270

ADAM T. DUKE, N.C. State Bar No. 39648

Attorneys for Parkway Bank

OF COUNSEL:

BELL, DAVIS & PITT, P.A. 100 North Cherry Street, Suite 600 P. O. Box 21029 Winston-Salem, NC 27120-1029 Telephone: (336) 722-3700

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MINGO TRIBAL PRESERVATION TRUST	'AL , WAY BANK	N.E.	RT # 6087	_
PO BOX 3410	,09 WILKESBORO BLVD	INE	Date 06-07-2007	
BUUNE, NC 2000/	PO BOX 1058 LENOIR, NC 28645		Maturity Date 12-07-2008	-
	22.401.1, 110 200 10		Loan Amount \$ 8.850.000.00 Renewal Of	
	LENDER'S NAME	AND ADDRESS	OFFICER # 002CS	
BORROWER'S NAME AND ADDRESS "!" includes each borrower above, jointly and severally.	"Vou" means the lender, it	s successors and assigns.		
"!" includes each borrower above, jointly and severally. For value received, I promise to pay to you, or your	strick address listed	above the PRINCIPAL sum	of <u>EIGHT MILLION EIGHT HUNDREI</u>	
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Multiple Advance: The principal sum shown and	ive is the maximum amount	- Participation of the same	al advances are contemplated.	
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DEFINITIONS: As used on page 1, "\(\sum_{\text{including}} \) weans the terms that apply to this loan. "I," "me" or "my" means each Borrower who signs this note and each other person or legal entity (including guarantors, endorsers, and sureties) who agrees to pay this note (together referred to as "us"). "You" or "your" means the Lender and its successors and assigns.

APPLICABLE LAW: The law of the state of North Carolina will govern this note. Any term of this note which is contrary to applicable law will not be effective, unless the law permits you and me to agree to such a variation. If any provision of this agreement cannot be enforced according to its terms, this fact will not affect the enforceability of the remainder of this terms, this fact will not affect the enforceability of the remainder of this agreement. No modification of this agreement may be made without your express written consent. Time is of the essence in this agreement.

COMMISSIONS OR OTHER REMUNERATION: I understand and agree that

any insurance premiums paid to insurance companies as part of this note will involve money retained by you or paid back to you as commissions or

will involve money retained by you or paid back to you as commissions or other remuneration.

In addition, I understand and agree that some other payments to third parties as part of this note may also involve money retained by you or paid back to you as commissions or other remuneration.

PAYMENTS: Each payment I make on this note will first reduce the amount I owe you for charges which are neither interest nor principal. The remainder of each payment will then reduce accrued unpaid interest, and then unpaid principal. If you and I agree to a different application of payments, we will describe our agreement on this note. I may prepay a part of, or the entire balance of this loan without penalty, unless we specify to the contrary on this note. Any partial prepayment will not excuse or reduce any later scheduled payment until this note is paid in full (unless, when I make the prepayment, you and I agree in writing to the funiess, when I make the prepayment, you and I agree in writing to the

contrary).

INTEREST: Interest accrues on the principal remaining unpaid from time to time, until paid in full. If I receive the principal in more than one advance, each advance will start to earn interest only when I receive the advance. The interest rate in effect on this note at any given time will apply to the entire principal advanced at that time. Notwithstanding anything to the contrary, I do not agree to pay and you do not intend to charge any rate of interest that is higher than the maximum rate of interest you could charge under applicable law for the extension of credit that is agreed to here leither before or after maturity). If any notice of interest accrual is sent and is in error, we mutually agree to correct it, and if you actually collect more interest than allowed by law and this agreement, you agree to refund it to me.

INDEX RATE: The index will serve only as a device for setting the rate on this note. You do not quarantee by selecting this index, or the margin,

INDEX HATE: The index will serve only as a device for setting the rate on this note. You do not guarantee by selecting this index, or the margin, that the rate on this note will be the same rate you charge on any other loans or class of loans to me or other borrowers.

ACCRUAL METHOD: The amount of interest that I will pay on this loan will be calculated using the interest rate and accrual method stated on page 1 of this note. For the purpose of interest calculation, the accrual method will determine the number of days in a "year," If no accrual method is stated, then you may use any reasonable accrual method is stated. method is stated, then you may use any reasonable accrual method for

method is stated, then you may use any reasonable accrual method for calculating interest.

POST MATURITY RATE: For purposes of deciding when the "Post Maturity Rate" (shown on page 1) applies, the Jerm "maturity" means the date of the last scheduled payment indicated on page 1 of this note or the date you accelerate payment on the note, whichever is earlier.

SINGLE ADVANCE LOANS: If this is a single advance loan, you and 1 expect that you will make only one advance of principal. However, you may add other amounts to the principal if you make any payments described in the "PAYMENTS BY LENDER" paragraph below.

MULTIPLE ADVANCE LOANS: If this is a multiple advance loan, you and expect that you will make more than one advance of principal. If this is closed end credit, repaying a part of the principal will not entitle me to additional credit.

additional credit. PAYMENTS BY LENDER: If you are authorized to pay, on my behalf, charges I am obligated to pay (such as property insurance premiums), then you may treat those payments made by you as advances and add them to the unpaid principal under this note, or you may demand immediate payment of the charges.

SET-OFF: I agree that you may set off any amount due and payable under this note against any right I have to receive money from you.

"Right to receive money from you" means:

"Right to receive money from you.

"Right to receive money from you" means:

(1) any deposit account balance I have with you;
(2) any money owed to me on an item presented to you or in your possession for collection or exchange; and
(3) any repurchase agreement or other nondeposit obligation.

"Any amount due and payable under this note" means the total amount of which you are entitled to demand payment under the terms of this note at the time you set off. This total includes any balance the due date for which you properly accelerate under this note.

If my right to receive money from you is also owned by someone who has not agreed to pay this note, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw or my sole request or endorsement. Your right of set-off does not apply to an account or other obligation where my rights are only as a representative. It also does not apply to any individual fletirement Account or other tax-deferred retirement account.

You will not be liable for the dishonor of any check when the dishonor occurs because you set off this debt against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right of set-off.

REAL ESTATE OR RESIDENCE SCOURITY: If this note is secured by re REAL ESTATE OR RESIDENCE SCORITY: If this note is secured by restate or a residence that is personal property, the existence of a defail and your remedies for such a default will be determined by applicable, by the terms of any separate instrument creating the securinterest and, to the extent not prohibited by law and not contrary to the terms of the separate security instrument, by the "Default" ar "Remedies" paragraphs herein.

DEFAULT: I will be in default if any one or more of the following occur. It fail to make a nayment on time or in the amount due: (2) I fail.

(1) I fail to make a payment on time or in the amount due; (2) I fail keep the property insured, if required; (3) I fail to pay, or keep ar promise, on any debt or agreement I have with you; (4) any other credition mine attempts to collect any debt I owe him through could be a second of mine attempts to collect any debt I owe him through could be a second or secon proceedings; (5) I die, am declared incompetent, make an assignment fo the benefit of creditors, or become insolvent (either because my liabilitie exceed my assets or I am unable to pay my debts as they become due (6) I make any written statement or provide any financial information this untrue or inaccurate at the time it was provided; (7) I do or fail to d something which causes you to believe that you will have difficult collecting the amount I owe you; (8) any collateral securing this note I used in a manner or for a purpose which threatens confiscation by a legi distortion in a manner of for a purpose which threatens confiscation by a legical authority; (9) I change my name or assume an additional name without first notifying you before making such a change; (10) I fail to plant cultivate and harvest crops in due season, if I am a producer of crops (11) any loan proceeds are used for a purpose that will contribute the excessive erosion of highly erodible land or to the conversion of wetland to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940. Subhart 6. Exhibit M.

Part 1940, Subpart G, Exhibit M.
REMEDIES: If I am in default on this note you have, but are not limited to the following remedies:

(1) You may demand immediate payment of all I owe you under this You may demand immediate payment of all I owe you under this note (principal, accrued unpaid interest and other accrued charges). If this is a high cost home loan, as defined under North Carolina law, your ability to accelerate all that I owe under this note it limited by N.C. Code § 24-1.1E (b)(1). You may set off this debt against any right I have to the payment of money from you, subject to the terms of the "Set-Off" paragraph herein.

You may demand security, additional security, or additional parties be obligated to pay this note as a condition for not using any other remedy

You may refuse to make advances to me or allow purchases on credit by me.

(6) You may use any remedy you have under state or federal law.
By selecting any one or more of these remedies you do not give up your right to later use any other remedy. By waiving your right to declare

your right to later use any other remedy. By waiving your right to declare an event to be a detault, you do not waive your right to later consider the event as a default if it continues or happens again.

COLLECTION COSTS AND ATTORNEY'S FEES: Lagree to pay all costs of collection, replevin or any other or similar type of cost if I am in default, in addition, if you hire an attorney to collect this note, I also agree to pay reasonable attorneys' sees plus court costs (except where prohibited by law). To the extent permitted by the United States Bankruptcy Code, I also agree to pay the reasonable attorney's fees and costs you incur to collect this debt as awarded by any court exceptions. collect this debt as awarded by any court exercising jurisdiction under the

Collect this deat as a smaller in the second of the second

(1) demand payment of amounts due (presentment

obtain official certification of nonpayment (protest); or (3) give notice that amounts due have not been paid (notice of

dishonor) I waive any defenses I have based on suretyship or impairment of

OBLIGATIONS INDEPENDENT: I understand that I must pay this note even if someone else has also agreed to pay it (by, for example, signing this form or a separate guarantee or endorsement). You may sue me alone, or anyone else who is obligated on this note, or any number of us together, to collect this note. You may do so without any notice that it has not been paid (notice of dishonor). You may without notice release any party to this agreement without releasing any other party. If you give up any of your rights, with or without notice, it will not affect my dury to pay this note. Any extension of new credit to any of us, or renewal of this note by all or less than all of us will not release me from my dury to pay it. (Of course, you are entitled to only one payment in full.) I agree that you may at your option extend this note or the debt represented by this note, or any portion of the note or debt, from time to time without limit or notice and for any term without affecting my liability for payment of the note. I will not assign my obligation under this agreement without your prior written approval.

your prior written approval.
FINANCIAL INFORMATION: I agree to provide you, upon request, any financial statement or information you may deem necessary that the financial statements and information I provide to you are or will be accurate, correct and complete.

be accurate, correct and complete. NOTICE: Unless otherwise required by law, any notice to me shall be given by delivering it or by mailing it by first class mail addressed to me at my last known address. My current address is on page 1. I agree to inform you in writing of any change in my address, I will give any notice to you by mailing it first class to your address stated on page 1 of this agreement, or to any other address that you have designated.

DATE OF TRANSACTION	PRINCIPAL ADVANCE	BORROWER'S INITIALS (not required)	PRINCIPAL PAYMENTS	PRINCIPAL BALANCE	INTEREST BATE	INTEREST PAYMENTS	INTEREST PAID THROUGH
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	1
	\$		\$	\$	%	\$	1
	\$		\$	\$	%	\$	

FILED
YADKIN COUNTY, NC
KAREN H. WAGONER
REGISTER OF DEEDS

FILED	Feb 08, 2010
AT	09:14:11 am
BOOK	00965
START PAGE	0333
END PAGE	0340
INSTRUMEN'	T# 00390

LOAN MODIFICATION AGREEMENT

Prepared by and return to:

Randall A. Underwood, Esq. Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P. Post Office Box 26000 Greensboro, NC 27420

This Loan Modification Agreement, effective this the 7th day of December, 2009, by and among Mingo Tribal Preservation Trust ("Borrower"), Parkway Bank, a commercial bank chartered and existing under the laws of the State of North Carolina ("Lender"), Todd H. Perdue, as Trustee ("Trustee") and Jesse W. Horton, Jr. ("Guarantor").

WITNESSETH:

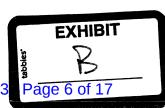
WHEREAS, Lender made a loan to Borrower (the "Loan") in the principal amount of up to \$8,850.000.00, which Loan is evidenced by a Promissory Note dated June 7, 2007 from Borrower in the stated amount of \$8,850,000.00, as modified by (i) a Loan Modification Agreement among the parties dated December 7, 2008 and recorded in Book 922, Page 347 of the Yadkin County, North Carolina Public Registry and (ii) a Loan Modification Agreement among the parties dated March 7, 2009 and recorded in Book 940, Page 457 of the Yadkin County, North Carolina Public Registry (the "Note") and secured by a Deed of Trust dated June 7, 2007 from Borrower to Trustee for the benefit of Lender which is recorded in Book 843, Page 434 of the Yadkin County, North Carolina Public Registry, as modified by the two Loan Modification Agreements described above (the "Deed of Trust"), and by the personal Guaranty dated June 7, 2007 executed by Guarantor (the "Guaranty"); and

WHEREAS, the parties have agreed to modify the agreements with respect to the Loan as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

- 1. **Modifications.** The Note is hereby modified as follows:
 - (a) The section of the Note entitled "PAYMENTS" is hereby deleted in its entirety and replaced with the following:

"PAYMENTS: I agree to pay this note as follows:



Interest shall accrue on the outstanding indebtedness from the date of this note until the indebtedness is paid in full. Interest on the outstanding principal balance will be due quarterly beginning September 7, 2007 and continuing on the seventh (7th) day of every third month thereafter until December 7, 2009. All outstanding principal, interest and other charges hereunder shall be due and payable in full on June 7, 2010."

- (b) The following additional provisions are hereby inserted in the section of the Note entitled "ADDITIONAL TERMS":
 - (i) "Notwithstanding anything to the contrary as set forth in this note, the rate of interest payable hereunder shall never be less than five and a half percent (5.5%) per annum."
 - (ii) "I agree that I will not incur any additional indebtedness for borrowed money or grant any liens or security interests against any of my real estate without your prior written consent."
 - (iii) "If any of my real estate is sold, any net proceeds remaining after satisfaction of prior liens and payment of ordinary closing expenses shall be paid to you to reduce the indebtedness hereunder."
 - (iv) "I will not convey or encumber any timber on the real property serving as collateral for this note."
 - (v) "To secure payment and performance of my obligations hereunder, I hereby grant you a security interest in any timber to be cut or any timber which may be cut on any property securing this indebtedness, which security interest shall be perfected by the filing by you of one or more Uniform Commercial Code financing statements or otherwise as required by law. In the event of a default hereunder you shall have all of the remedies available under applicable law, including those set forth in the Uniform Commercial Code as in effect in North Carolina."
 - (vi) "I shall provide monthly marketing updates with respect to my efforts to sell any and all of my real properties.
 - (vii) "I shall provide to you quarterly balance sheets and income statements prepared in accordance with generally accepted accounting principles no later than fifteen days after the end of each quarter, which financial statements shall be certified by at least one of my trustees as being accurate in all material respects."
- 2. Inconsistent Provisions. To the extent that the Deed of Trust or any other agreement executed or delivered in connection with the Loan is inconsistent with the revised terms which are set forth in Paragraph 1 above, such documents and agreements are modified so that they are consistent with the revised provisions set forth above.
- 3. *Modification Only.* The provisions of this Agreement constitute a modification of the Note and do not constitute a novation.
- 4. Defenses, Enforceability and Security. Borrower acknowledges and agrees that there are no defenses or impediments to the enforcement by the Lender of the terms of the Note, the Deed of Trust or any other document or agreement executed or delivered in connection with the Loan. The parties hereto agree that the Deed of Trust is and continues to be in full force and effect and secures the Note, as modified herein, and all of the other obligations set forth in the Deed of Trust. The Deed of Trust continues to secure both the initial obligation of \$7,657,172.23 existing on the date of the Deed of Trust

RB965 P0335

and future obligations; provided, however, that the maximum principal amount secured by the Deed of Trust at any one time, excluding amounts described in North Carolina General Statutes § 45-70(c), shall not exceed \$8,850,000.00, and all such future obligations secured by the Deed of Trust shall be incurred within fifteen (15) years after the date of the Deed of Trust.

- 5. Registration and Enhancement. Borrower shall pay all recording fees assessed in connection with the recordation of this Agreement and shall deliver to Lender an endorsement to title insurance policy number M-9702-1233552 issued by Stewart Title Guaranty Company (the "Policy") in connection with the Loan, which endorsement shall change the effective date of the Policy to the time of the registration of this Agreement in the Yadkin County, North Carolina Registry.
- 6. Guarantor Consent. Guarantor hereby agrees and consents to all of the provisions set forth above and agrees that the Guaranty remains in full force and effect and is enforceable in accordance with its terms.
- 7. Merger Clause. This Agreement sets forth the entire understanding of the parties with respect to the modification of the Note, the Deed of Trust and other agreements executed or delivered in connection with the Loan and supersedes any prior written or oral communication or understanding with respect to such modification.
- 8. Governing Law. This Agreement is made in and shall be governed by and construed in accordance with the laws of the State of North Carolina.
- 9. Other Covenants Unchanged. Except as expressly set forth in this Agreement, the Note, the Deed of Trust and all other agreements executed or delivered in connection with the Loan shall remain in full force and effect and shall be unchanged.
- 10. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their heirs, successors and assigns.
- Representations and Warranties by Trustees. Each of the individuals signing below on 11. behalf of the Borrower represents and warrants that he is a duly appointed trustee of Mingo Tribal Preservation Trust (the "Trust") and that the three individuals signing below on behalf of the Trust are all of the trustees duly appointed and serving pursuant to the terms of the Trust. Each of such trustees epresents and warrants that this Agreement has been duly approved by all necessary action of the Trust and its trustees, that he is duly authorized to execute this Agreement for and on behalf of the Trust and that the Note, the Deed of Trust and all other agreements executed in connection with the Loan are duly enforceable against the Trust and all assets of the Trust, in accordance with their terms; provided, however, that the rights of Lender in the real property containing approximately 1500 acres in Wilkes County, North Carolina known as the "Homeland" shall be subject to the terms of the Trust Agreement dated January 4, 1993, pursuant to which the Borrower was established. The Borrower and each of the individuals signing below on behalf of the Borrower represent and warrant to Lender that the aforedescribed "Homeland" property does not include any of the property conveyed in the Deed of Trust or any of the property conveyed in a deed of trust from the Trustees of the Borrower in favor of Ball Ventures LLC dated January 29, 2004 and recorded in Book 936, Page 394 of the Wilkes County, North Carolina Public Registry.

RB965 P03JJ,

WITNESS the signatures of the undersigned, this the day and year first above written.

Mingo Tribal Preservation Trust

Jesse W. Horton, Jr., Trustee

State of North Carolina
County of Watauga

I certify that the following person(s) personally came before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document: Jesse W. Horton. Jr., Trustee

Name of Signer)

 $\dot{\psi}$ Witness my hand and notarial stamp or seal, this $2 \frac{1}{2}$ day of $\frac{1}{2}$

Printed Name of Notary Public

My Commission Expires:

WITNESS the signatures of the undersigned, this the day and year first above written.

Mingo Tribal Preservation Trust

George E. Wilson, Trustee

State of North Constant
County of Latinga

I certify that the following person(s) personally came before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document:

George E. Wilson, Trustee

My Commission Expires:

Name of Signer)

Witness my hand and notarial stamp or seal, this $\frac{98}{98}$ day of $\frac{6}{9}$

Signature of Notary Public

Printed Name of Notary Public

RB965 ru338

WITNESS the signatures of the undersigned, this the day and year first above written.

Mingo Tribal Preservation Trust

By: Mark R. Ricks Trustee

State of <u>Ideho</u>

County of Tetan

I certify that the following person(s) personally came before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document:

Mark R. Ricks, Trustee

Name of Signer)

Witness my hand and notarial stamp or seal, this 29 th day of Jan. 2010.

LESETTE N. BOTT NOTARY PUBLIC STATE OF IDAHO

Printed Name of Notary Public

(Official Seal)

My Commission Expires: /- 3-/2

WITNESS the signatures of the und	dersigned, this the day and year first above written.
	Vesse UD There
	Jesse W. Horton, Jr., Guarantor
State of North Carolina	
County of Lintaugas	
acknowledging to me that he or she	erson(s) personally came before me this day, each voluntarily signed the foregoing document:
Jesse W. Horton, Jr. Name of Signer)	
Witness my hand and notari	al stamp or seal, this DS day of Collucial, 2010.
CHANGE OF A DISTRICT	Languer C On dan Signature of Notary Public
PUBLICASE	Tammie C Jardal
(Official Seal)	Printed Name of Notary Public
My Commission Expires:	
<u>Quelle</u> 19,2010	

RB965 PUJ4↑

WITNESS the signatures of the undersigned, this the day and year first above written.
Parkway Bank
5 Court Other
Printed Name: Carol S. Shifan
Title:
Todd H. Pérdue, Trustee
State of Λ . C.
County of CALOWELL
I certify that the following person(s) personally came before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document:
Name of Signer)
Witness my hand and notarial stamp or seal, this 29 th day of <u>JANOARY</u> , 2010.
Signature of Notary Public
Signature of Notary Public MARIA H. MOORE MARIA H. MOORE
NOTARY PUBLIC (Difficial Swell county no
My Commission Expires:
Tate of N. C.
County of CALDWELL
I certify that the following person(s) personally came before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document: Todd H. Perdue. Trustee Name of Signer)
Witness my hand and notarial stamp or seal, this 29th day of JANUARY, 2010.
Main D. Moore
Signature of Notary Public MARIA H. MOORE MARIA H. MOORE MARIA H. MOORE MARIA H. MOORE
NOTARY PUBLIC CALDWELL COUNTY, NC (Official Seal) Printed Name of Notary Public

My Commission Expires: 03/25/2014

File No. STATE OF NORTH CAL LINA rilm No. COUNTY Yadkin In the General Court of Justice Superior Court Division Before the Clerk Mortgagors-Grantors Mingo Tribal Preservation Trust FINAL REPORT AND ACCOUNT Mortgagee - Trustee Parkway Bank Stanley P. Dean Deed of Trust Book and Page 843/434 FORECLOSURE SALE G.S. 45-21.33, 31 Owners of record if not original mortgagors

All of the property referred to in the Mortgage or Deed of Trust indicated above was sold as a whole and the entire amount of the secured obligation was satisfied. If facts are otherwise, explain:

A deficiency balance will remain.

Name of Purchaser(s): Parkway Bank

*List reason paid to CSC

?E	ITEM	DISBURSEMENTS	RECEIPTS
	Proceeds of Sale		\$5,700,000.00
	Court Costs - filing fee to Clerk	\$150.00	
	Cost for publication of notice of sale	2,546.90	
	Trustee's Commission	920.00	
	Auctioneer's fee	0.00	
	Real Property Taxes	0.00	
	Documentary Stamps	11,400.00	
	Secured Obligations	5,684,449.10	
(Service Fee(s) to Sheriff (hearing waived)	0.00	
	Recording Costs to Register of Deeds Sub. Trustee \$17; Fore. Entry \$17	34.00	
	Audit Fee to Clerk	500.00	
	Surplus sale proceeds paid to CSC*	0.00	
	TOTALS	\$5,700,000.00	\$5,700,000.00

I hereby certify that the above is a true and complete account of my receipts and disbursements and that notice of hearing, ale and resale were served upon all parties entitled to such notice by statute.

Audited and Approved

7-5-//

Name of Mortgagee-Trustee, Attorney-Agent
Stanley P. Dean

Signature of Mortgagee-Trustee, Attorney-Agent
Stanley P. Dean

Signature of Mortgagee-Trustee, Attorney-Agent

Massistant CSC

Clerk of Superior Court

Clerk of Superior Court

GUARANTY

	LENOIR	(City)	,NORTH CAROLINA (State)
For good and valuable consideration, the receip	pt and sufficier	07, 2007 acy of which are hereb	y acknowledged, and to in-
duce <u>PARKWAY BANK</u> (herein, with its participants, successors and assi time to make loans or extend other accommodation	15 (0 0) 10) 110	2000	
(herein called "Borrower") or to engage in any oth and unconditionally guarantees to Lender the full reason of acceleration or otherwise, of the debts, li A. If this ☑ is checked, the Undersigned gua bility or obligation of Borrower to Lender ev 2007.	er transactions and prompt partiabilities and ob- arantees to Len videnced by or a	with Borrower, the Ur yment when due, whe ligations described as for der the payment and parising out of the follow	ndersigned hereby absolutely ther at maturity or earlier by ollows: performance of the debt, lia- ying: LOAN DATED JUNE 7, and any extensions,
enewals or replacements thereof (hereinafine B. If this is checked, the Undersigned govern debt, liability and obligation of every hereafter owe to Lender (whether such incurred, and whether it is or may be diprimary or secondary, liquidated or unliquidations being hereinafter this guaranty includes the following descriptions.	ry type and de debt, liability o irect or indirec quidated, or jo collectively ref	scription which Borrov or obligation now exist, due or to become	ver may now or at any time ts or is hereafter created or due, absolute or contingent, and several; all such debts,
The Undersigned further acknowledges and agree 1. No act or thing need occur to establish the full payment and discharge of all indebtedness, stor release the liability of the Undersigned hereunde 2. This is an absolute, unconditional and contito be in force and be binding upon the Undersignaranty is revoked by written notice actually reto Indebtedness existing or committed for at the renewals, extensions and refinancings thereof. Effective only as to the one so revoking. The guaranty, except upon actual receipt of written incompetent and only prospectively, as to future to 3. If the Undersigned shall be dissolved, shall this guaranty, then the Lender shall have the right will forthwith pay to the Lender, the full amount Undersigned voluntarily commences or there is contitued States Bankruptcy Code, the full amount be immediately due and payable without demand 4. The liability of the Undersigned hereunder self-to amount), plus accrued interest thereon and agreements evidencing the Indebtedness and so collection costs and enforcement expenses referamount, whether or not in excess of such proundersigned hereunder. The Lender may apply Indebtedness from Borrower or any other per collateral security or from any other source to pay affect or impair the liability of the Undersigned amount pursuant to this paragraph 4, any paym to reduce or discharge such liability only if accordadvising the Lender that such payment is made used to any litigation or bankruptcy or insolvency process.	ees with Lender liability of the hall in any way er. inuing guaranty signed, whethe ceived by the Let time of actual of there be more death or inconnotice thereof transactions, as Il die, or shall be ght to declare of all Indebted or notice thereof or notice thereof shall be limited or notice thereof shall be limited estigned shall be all other costs ecuring the payerable thereto. Incipal amount, any sums received any sums received by a variety of the entity o	exonerate the Undersite of payment of the Incir or not all Indebtednender, and such revoce receipt of such notice than one Undersign hy Lender and then or herein set forth. The or become insolvent immediately due and pheses, whether due and oluntarily against the ness, whether due and oluntarily against the ness, whether due and off. It is a principal amount of the Indebtedness, fees, and expenses, without affecting or the Undersigned), from excess. Such application the Undersigned under written transmittal document of such protection, defense of which are made a part of the line undersigned of the Undersigned under the protection, defense of which are made a part of the line undersigned of the undersigned under the protection, defense of which are made a part of the undersigned of the undersigned of the undersigned of the undersigned under the u	debtedness and shall continue less is paid in full, until this ation shall not be effective as a by the Lender, or as to any led, such revocation shall be risigned shall not revoke this nly as to the decedent or the decedent or the decedent or the decedent of the decede
in any litigation or bankruptcy or insolvency proc This guaranty includes the additional provisions This guaranty is ⊠ unsecured; ☐ secured by		r security agreement d	ated;
Secured by	peen duly execu	Ited by the Undersigne	ed the day and year first above
written.	(JESSE W. HORTON JR.	torton A.
EXHIBIT	Č.		<i>.</i>
applies.		"Undersigned" shall refer to all per	sons who sign this guaranty, severally and jointly.

ADDITIONAL PROVISIONS

- 6. Whether or not any existing relationship between the Undersigned and Borrower has been changed or ended and whether or not this guaranty has been revoked, Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of Indebtedness, without any consent or approval by the Undersigned and without any notice to the Undersigned. The liability of the Undersigned shall not be affected or impaired by any of the following acts or things (which Lender is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty, without notice to or approval by the Undersigned): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all Indebtedness; (ii) any one or more extensions or renewals of Indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any Indebtedness; (iii) any waiver, adjustment, forbearance, compromise or indulgence granted to Borrower, any delay or lack of diligence in the enforcement of Indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any Indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Borrower or any other guarantor or other person liable in respect of any Indebtedness; (v) any discharge of any evidence of Indebtedness or the acceptance of any instrument in renewal thereof or substitution therefor; (vi) any failure to obtain collateral security (including rights of setoff) for Indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any release, modification, substitution, discharge, impairment, deterioration, waste, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any Indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon Indebtedness; (x) any election by the Lender under §1111(b)(2) of the United States Bankruptcy Code.
- 7. The Undersigned waives any and all defenses, claims and discharges of Borrower, or any other obligor, pertaining to Indebtedness, except the defense of discharge by payment in full. Without limiting the generality of the foregoing, the Undersigned will not assert, plead or enforce against Lender any defense of waiver, release, statute of limitations, res judicata, statute of frauds, fraud, incapacity, minority, usury, illegality or unenforceability which may be available to Borrower or any other person liable in respect of any Indebtedness, or any setoff available against Lender to Borrower or any such other person, whether or not on account of a related transaction. The Undersigned expressly agrees that the Undersigned shall be and remain liable, to the fullest extent permitted by applicable law, for any deficiency remaining after foreclosure of any mortgage or security interest securing Indebtedness, whether or not the liability of Borrower or any other obligor for such deficiency is discharged pursuant to statute or judicial decision. The Undersigned shall remain obligated, to the fullest extent permitted by law, to pay such amounts as though the Borrower's obligations had not been discharged.
- 8. The Undersigned further agrees that the Undersigned shall be and remain obligated to pay Indebtedness even though any other person obligated to pay Indebtedness, including Borrower, has such obligation discharged in bankruptcy or otherwise discharged by law. "Indebtedness" shall include post-bankruptcy petition interest and attorneys' fees and any other amounts which Borrower is discharged from paying or which do not otherwise accrue to Indebtedness due to Borrower's discharge, and the Undersigned shall remain obligated to pay such amounts as though Borrower's obligations had not been discharged.
- 9. If any payment applied by Lender to Indebtedness is thereafter set aside, recovered, rescinded or required to be returned for any reason (including, without limitation, the bankruptcy, insolvency or reorganization of Borrower or any other obligor), the Indebtedness to which such payment was applied shall for the purposes of this guaranty be deemed to have continued in existence, notwithstanding such application, and this guaranty shall be enforceable as to such Indebtedness as fully as if such application had never been made.
- 10. Until the obligations of the Borrower to Lender have been paid in full, the Undersigned waives any claim, remedy or other right which the Undersigned may now have or hereafter acquire against Borrower or any other person obligated to pay Indebtedness arising out of the creation or performance of the Undersigned's obligation under this guaranty, including, without limitation, any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any right to participate in any claim or remedy the Undersigned may have against the Borrower, collateral, or other party obligated for Borrower's debts, whether or not such claim, remedy or right arises in equity, or under contract, statute or common law.
- 11. The Undersigned waives presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing Indebtedness. Lender shall not be required first to resort for payment of the Indebtedness to Borrower or other persons or their properties, or first to enforce, realize upon or exhaust any collateral security for Indebtedness, before enforcing this guaranty.
- 12. The liability of the Undersigned under this guaranty is in addition to and shall be cumulative with all other liabilities of the Undersigned to Lender as guarantor or otherwise, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.
- 13. This guaranty shall be enforceable against each person signing this guaranty, even if only one person signs and regardless of any failure of other persons to sign this guaranty. If there be more than one signer, all agreements and promises herein shall be construed to be, and are hereby declared to be, joint and several in each of every particular and shall be fully binding upon and enforceable against either, any or all the Undersigned. This guaranty shall be effective upon delivery to Lender, without further act, condition or acceptance by Lender, shall be binding upon the Undersigned and the heirs, representatives, successors and assigns of the Undersigned and shall inure to the benefit of Lender and its participants, successors and assigns. Any invalidity or unenforceability of any provision or application of this guaranty shall not affect other lawful provisions and application hereof, and to this end the provisions of this guaranty are declared to be severable. Except as authorized by the terms herein, this guaranty may not be waived, modified, amended, terminated, released or otherwise changed except by a writing signed by the Undersigned and Lender. This guaranty shall be governed by the laws of the State in which it is executed. The Undersigned waives notice of Lender's acceptance hereof.

STATE OF NORTH CAROLINA

COUNTY OF FORSYTH

Jerry H. Ollis, being duly sworn, deposes and says that he is a Senior Vice President for the Plaintiff, Parkway Bank, in the above-titled action; that he has read the foregoing Complaint and knows the contents thereof; and that the same is true of his own knowledge based upon business records made and kept in the course of regularly conducted business of Parkway Bank, except as to matters therein stated to be alleged on information and belief, and as to those matters he believes them to be true.

Jerry H. Ollis Senior Vice President

Parkway Bank

Aldwell County, North Carolina

Signed and sworn to before me this day by Jerry H. Ollis.

Date: 1-18.2011

Commission Expires

GARY S. FORD NOTARY PUBLIC

CALDWELL COUNTY, N. C.

My commission expires: 6 - 28 - 2014